

## **MEETING RECORD**

**NAME OF GROUP:** City Board of Zoning Appeals

**DATE, TIME AND**

**PLACE OF MEETING:**

Friday, April 29, 2005, 1:30 p.m., Hearing Chambers, County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska

**MEMBERS AND OTHERS**

**IN ATTENDANCE:**

**Members:** Gene Carroll, George Hancock, Bob Kuzelka and Tom Wanser. Gerry Krieser absent.  
**Others:** Terry Kathe (Building & Safety), Tonya Skinner (City Law Dept.), Becky Horner and Michele Abendroth (Planning Dept.), applicants and other interested parties.

**STATED PURPOSE**

**OF THE MEETING:**

Regular Meeting of the City Board of Zoning Appeals

Chair Gene Carroll called the meeting to order at 1:34 p.m.

### **Election of Vice-Chair**

Georg Hancock nominated Tom Wanser as Vice-Chair, seconded by Carroll. Motion carried 4-0. Carroll, Hancock, Kuzelka and Wanser voting 'yes'; Krieser absent.

### **Approval of the minutes of the March 25, 2005 meeting**

Bob Kuzelka moved approval of the March 25, 2005 meeting minutes seconded by Wanser. Motion carried 4-0. Carroll, Hancock, Kuzelka and Wanser voting 'yes'; Krieser absent.

### **Appeal No. 05003 by Dan Rudolph and Vivian Smith for a variance of the rear yard setback on property generally located at 4211 S. 33<sup>rd</sup> Street.**

Becky Horner stated that the Planning Department received a letter from Runza National regarding their application. The hearing was closed at the previous meeting, but the application was re-advertised for a possible hearing. If the Board would like to consider the information contained in the letter, the application would need to be opened for a public hearing, which would require a motion and vote by the Board.

Wanser moved to open the application for public hearing, seconded by Hancock. Motion carried 4-0. Carroll, Hancock, Kuzelka and Wanser voting 'yes'; Krieser absent.

## **PUBLIC HEARING**

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Following a short pause to allow the Board members time to read the letter, Carl Sjulín of Runza National stated that the letter summarizes a couple of the unique characteristics of the property. He noted the topographical change on the west side of the property. There is also a parking and safety issue which would result if the variance were not granted.

Kuzelka asked if the drop in the terrain runs the entire length of the property. Sjulín stated that it tapers down and it is mostly on the south side of the property where the new addition will be constructed.

Wanser asked if this application could be approved with some conditions by stating that the variance is

only for this property or only for these improvements. Horner stated that she recalls granting variances with conditions specific to the location and not the use.

Carroll asked when the zoning was established on the property. Horner stated that the zoning was established in 1955, and the property was built in 1970. Carroll remarked that the zoning was in place when the strip mall was built, and any new construction must meet the setback requirements.

Sjulin stated that the property is comprised of two separate legal parcels. The proposed construction and variance can be defined in the other lot. One possibility is a conditional grant just for this building permit. They are not seeking a variance for the entire length of the property, just the south end.

Carroll asked if there was further testimony in favor of or against this appeal. With no one appearing further, Carroll closed the hearing.

## **ACTION**

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Skinner stated that we cannot grant use variances, only area variances. With an area variance, we would have to specify why it is granted in that area only. Another business may want to do the same thing.

Wanser asked if they could make this project-specific and not be grandfathered. Skinner stated that in the previous case, it was not tied to a particular building sitting on a particular piece of land. This would be tying it to the use and not the land itself.

Horner clarified that this property is described as two parcels but it is one lot.

Kuzelka asked if we are limited to either granting the variance or not. Skinner stated that we have allowed a variance for a particular area, but it was based on very specific circumstances and reasons.

Kuzelka moved approval of the application because of the pre-existing setbacks on the lot already and the extreme terrain change which would make it unusable; Wanser seconded. Wanser stated that this is highly unusual. The extreme topography may be the only legal reason to approve this variance. But there are improvements on this lot that were built per the existing zoning, and if we do not allow this variance, that is an extreme hardship for that property.

Skinner stated that a legal reason for hardship is not the fact that you were under one zoning and now you are under new zoning. She advised Wanser not to use that reason. Wanser stated that he has two reasons, one of which is the unusual topography of the lot. He respects Skinner's opinion in saying that we cannot consider that reason, but that is part of what his reasoning is. Skinner advised him that by basing his decision on a reason that is not legal, he is creating a problem. She advised him to keep his reason on the topography but not consider the change in zoning.

Hancock stated that they are not permitted to consider hardship until after they have determined there are peculiar or unusual circumstances.

Kuzelka asked if using pre-existing zoning as a basis for peculiar, unusual or exception is allowed. Skinner stated that it is not allowed. She added that any properties built prior to 1979 that have a different setback and is less than our current requirement, you would be saying that would be a hardship and unusual circumstances. This would not be a hardship because they are still allowed to comply, although they cannot add or re-construct at that setback. It is also not unusual because a lot of properties were built under the old zoning codes.

Skinner stated that the hardship goes with the land, not with the building on the land. As long as the

owner is not denied a reasonable use of the land, that is not a hardship. She added that they must find peculiar, unusual or exceptional circumstances with the land.

Carroll stated that there is nothing peculiar, unusual or exceptional about this property. Topography across Lincoln is different everywhere. He will vote against this application because it does not fall under the guidelines that they are required to follow.

Motion to approve carried 3-1. Hancock, Kuzelka and Wanser voting 'yes'; Carroll voting 'no'. Krieser absent.

**Appeal No. 2379 by Cameron Hill for a variance of the rear yard setback on property generally located at 3201 Arbor Road.**

**ACTION**

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Horner stated that there has been no communication with the applicant since the last meeting. Skinner stated that she left a message for Mr. Hill, but he did not return her call. She advised the Board that they can approve or disapprove the application or table it.

Hancock moved to table this application and advise the applicant that they will take action at the next meeting, seconded by Wanser. Motion carried 4-0. Carroll, Hancock, Kuzelka and Wanser voting 'yes'; Krieser absent.

Hancock adjourned the meeting at 2:14 p.m.